

Sac & Fox Tribe of the Mississippi in Iowa

Meskwaki Natural Resources
1826 340th St, Tama, IA 52339
Phone (641) 484-3511 Fax (641) 484-3614

24 March 2017

MS. Heather Duncan
R7 Tribal Water Programs Coordinator
Environmental Protection Agency, Region 7

Dear Heather Duncan,

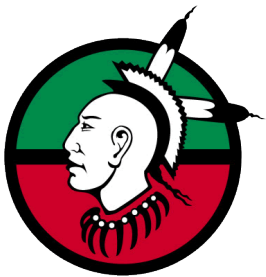
RE: Application for Treatment in the similar manner As a State (TAS)

The Sac & Fox Tribe of the Mississippi in Iowa hereby applies under section 518 of the Clean Water Act (CWA) to the U.S. Environmental Protection Agency to become eligible to be treated in a similar manner as a state (TAS) to administer a CWA section 303(c) water quality standards program and CWA section 401 water quality certification program.

1. BACKGROUND

The Meskwaki Settlement was established July 13, 1857 when members of the Meskwaki Tribe purchases eighty acres of land in Tama County, Iowa. The title to this land was held by the Governor of Iowa in trust for the benefit of the members of the Tribe. Legal title to the property was later (1896) transferred to the Federal Government and held in trust for the Tribe. Since the original land purchase the Tribe has purchased additional land and its current holdings in Tama County comprise of approximately 7,607 acres and in Palo Alto County approximately 758 acres. Legal title to most of the Tribe's land is held in Trust by the federal government for the benefit of the Tribe. The fee land owned by the Tribe is the subject of pending or contemplated fee-to-trust applications.

The Meskwaki Settlement (Settlement) is in the northeast corner of the area generally described as central Iowa. The Settlement is located about fifty miles west of Cedar Rapids, Iowa near the towns of Toledo and Tama. Topographic Relief varies from high of 1,000 feet (ft.) in the northern and eastern portions of the Settlement to a low of 825 feet near the Iowa River valley in the southeastern portion of the Settlement. The Iowa River enters the Settlement at the southwest boundary and runs in a southeasterly direction where it forms the southern boundary of much of the Settlement. U.S. Highway 30 passes west to east through the northern portion of the Settlement and Highway 49 passes west to east through the southern portion of the Settlement.



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Resolution

It has been the goal of the Meskwaki Tribal Operations department of Natural Resources to create Tribal Water Quality standards for the betterment of the water quality on the Tribal lands since 2006. The first steps taken were to work cooperatively with the U.S. Environmental Protection Agency (EPA), U.S. Geological Survey (USGS) and other area agencies to create a baseline understanding of the Meskwaki waters. These first lead partnerships to the Tribe's first TAS from the EPA for CWA 106 funding for surface water sampling, which was approved in June 2008.

Progress since then has been the growth of the Tribal water program within the Natural Resources department and development of surface water baseline data. In December 2016, the Tribal Council passed a resolution stating the Tribes desire to formally designate and establish Tribal water quality standards within the exterior boundaries of the Meskwaki Settlement for the protection of the Sac & Fox Tribe of the Mississippi in Iowa Tribal waters.

Tribal Waters

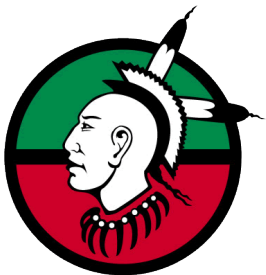
- Surface Water

Approximately 7 miles of the Iowa River pass through the Settlement, with nearly half of the distance within the Settlement boundaries. The Settlement's waters are part of the Eastern Iowa Basin, which encompasses approximately 19,500 square miles in Eastern Iowa and Southern Minnesota. More than 90% of the land in the basin is used for agriculture and 4 % being forested. Within the basin, the section of the Iowa River that flows through the Settlement is classified as the "Middle Iowa River." The river flows from the northwest to the southeast through central Iowa with the elevation of the area ranging between 700-1000 feet above sea level. The area receives an average of 33.5 inches of precipitation per year.

Additional waters within the Settlement include four named streams (Onion, Raven, Bennett and Cattail creeks) in addition to several more unnamed creeks. There are several manmade retention and settling ponds within the Settlement boundaries. All are un-named but referred to by their location and who requested it (i.e. South Farm's ponds or Buffalo Settling pond).

- Groundwater

The groundwater of the Settlement encompass all of the aquifer components, natural springs and seeps located within the exterior boundaries of the approximately 7,600 acres Settlement. In east central Iowa, there are three separate superficial aquifers and five bedrock aquifers in existence. Wells supply water for most communities, farms and industries in east



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central Iowa. The primary source of drinking water for the Settlement are five wells near the Tribe's water treatment plant. However, some tribal member homes (Mostly south of Highway 49) are serviced by Poweshiek water and private groundwater wells.

2. FEDERAL RECOGNITION (40 CFR 131.8(a)(1) and (b)(1))

The Tribe is listed as Sac & Fox Tribe of the Mississippi in Iowa in the Secretary of the Interior's list of federally recognized tribes at 81 FR 26826, May 4, 2016. See attachment A.

3. AUTHORITY OVER A FEDERAL INDIAN RESERVATION (40CFR 131.8(a)(1) and 131.3(1))

The Meskwaki Settlement and trust land are a de facto reservation per U.S. V Papakee, 485 F Supp.2d 1032, at 1044, 1045 (N.D. IA, 2007). Finding that the original Settlement is a de facto reservation and that Indian trust land, even if not within the boundaries of a "reservation," may nonetheless be classified as a de facto reservation, which includes the other lands held in trust for the Tribe. EPA treats trust lands that have been validly set aside for use of a tribe as if they are Indian reservation, even if the trust lands have not been formally designated as a reservation.

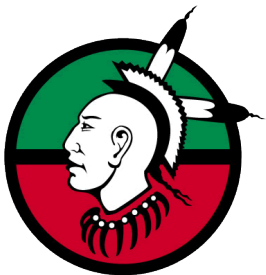
The Tribe exercises sole regulatory jurisdiction over the waters within the boundaries of the Settlement and overs its fee lands that comprise "Indian Country." By its express terms, the Tribal Constitution applies to all territory of the Tribe known as the Sac & Fox Settlement, jurisdiction of which was accepted by the United States by the Act of June 10, 1896 (29 Stat. 331), and to such other land as may be added thereto by or for the Tribe (Tribal Const. Art. 1, Sec. 1).

4. TRIBAL GOVERNANCE (40 CFR 131.8(a)(2) and (b)(2))

The Sac & Fox Tribe of the Mississippi in Iowa has a governing body carrying out substantial governmental duties and powers. See the Tribe's pervious TAS application for the CWA 106 program submitted to the EPA on March 13, 2008 and approved by the EPA Regional Administrator on June 19, 2008.

5. MANAGEMENT AND PROTECTION OF WATER RESOURCES OF THE RESERVATION (40 CFR 131.8(a)(3) and (b)(3))

The water quality standards and water quality certification programs to be administered by the Tribe will assist in managing and protecting water resources within the borders of the Tribe's Settlement. The boundaries of the Settlement for which the Tribe is seeking authority to administer the water quality standards and water quality certification programs are identified in the attached maps. The surface water for which the Tribe proposed to establish water quality



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standards are those surface waters that occur on the Settlement area described in the maps attached.

6. TRIBAL LEGAL COUNSEL STATEMENT (40 CFR 131.8(b)(3)(ii))

Please see the attached statement by the Tribe's Attorney General for reference of the Tribe's assertion of authority. The Tribe's Settlement areas are described in Section 5 of the application. The Tribe's Constitution demonstrates the Tribe's exercise of authority in general over the Settlement. See section 3 of TAS application.

The basis for the Tribe's assertion of authority under this application is the express congressional delegation of authority to eligible Indian tribes to administer regulatory programs over their reservation contained in section 518 of the Clean Water Act. This authority is described in the U.S. Environmental Protection Agency's final interpretive rule, *Revised Interpretation of Clean Water Act Tribal Provision*, 81 FR 30183, May 16, 2016.

7. TRIBAL CAPABILITY

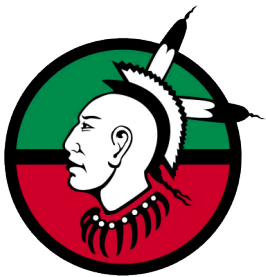
The Tribe is capable of administering effective water quality standards and water quality certification programs as described below.

The overall organization of the Tribe's government and experience in managing programs, such as environmental and public health programs, are described in the 2008 CWA 106 TAS application approved June 19, 2008.

The responsibilities to establish, review, implement and revise water quality standards will be assigned to the Meskwaki Natural Resources (MNR) department. The Tribal entity that will be responsible for conducting water quality certifications under section 401 will also be the Meskwaki Natural Resources department.

Through the specific laws that the Tribal Council has adopted to support the exercise of the Tribe's Jurisdiction over the water and other natural resources within the boundaries of the Settlement and the fee lands of the Tribe. The Tribal Code includes a comprehensive enactment governing the natural resources of the Tribe. See, Title 14- Natural Resources.

The Natural Resources Code established the Sac & Fox Tribe of the Mississippi in Iowa Natural Resource department as a subordinate agency of the Tribe, with the delegated powers, duties and responsibilities of the Tribal Council as expressed in Title 14. Sac & Fox Tribe of the Mississippi in Iowa Code Sec. 14-2201. By express authority, the department is responsible for the management, protection and conservation of the forests and grasslands, energy, fish, wildlife, environment, land, water and all other natural resources of the Tribe. Tribal Code Sec 14-2202(a).



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The powers, duties and responsibilities of the Meskwaki Natural Resources department include the following pertinent tasks:

- Collection, classification, and preservation of all statistics, data and information tending to promote the objective of the department and any law it administers;
- The conduct of research in improved conservation methods;
- The Preparation, maintenance and continuous update of a comprehensive plan for the development and conservation of the natural resources of the Tribe; and
- The administration of any other laws it is charged by the Tribal Council with administering Sac & Fox Tribe of Mississippi in Iowa Code sec 14-2202(b).

The organizational structure of the department is such that the director of the Natural Resources (who is appointed by the Tribal Council), is the administrative head of the department. By Statute, the director is responsible, among other matters, for all natural resources functions on the Settlement. In addition, the director has the authority to promulgate rules and regulations for the operation of the MNR department, subject to final review and approval by the Tribal Council. Sac & Fox Tribe of the Mississippi in Iowa Code sec. 14-2205

Experienced staff, in addition to the department director, are already on board and trained to administer the water quality standards and certification programs. This includes:

- Natural Resource Director: Jarrett Pfrimmer
- Natural Resource Coordinator: Kelly Schott
- Natural Resource Project Leader: Crystal Davis
- Natural Resource Technician: Megan Dietrich

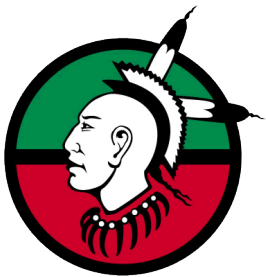
With additional support as needed from:

- Natural Resource Interns: Seasonal

See attachments for each positions job descriptions.

List of Attachments:

- A. BIA list of Federally Recognized Tribes
- B. Tribal Constitution
- C. Title 14- Natural Resource Code
- D. Title 16- Property Codes
- E. Tribal Boundaries Map (W/ Tribal waters labeled)
- F. Fee and Trust Status Map



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- G. Letter from Meskwaki Attorney General
- H. Job Description-Natural Resource Director
- I. Job Description-Natural Resource Coordinator
- J. Job Description-Natural Resource Project Leader
- K. Job Description-Natural Resource Technician
- L. Job Description-Natural Resource Intern
- M. Tribal Organizational Chart